

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3496

IN THE MATTER OF:

Served May 2, 1990

Application of MADISON LIMOUSINE)	Case No. CP-90-01
SERVICE, INC., for Special)	
Authorization to Conduct Charter)	
Operations Pursuant to Contract)	
with PAN AMERICAN WORLD AIRWAYS,)	
INC.)	

By application filed March 27, 1990, Madison Limousine Service, Inc. (Madison or applicant), seeks authority pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 to transport flight attendants and cockpit crew members of Pan American World Airways, Inc. (Pan Am), together with baggage in the same vehicles as passengers, in charter operations under contract with Pan Am between Washington Dulles International Airport (Dulles), Loudoun County, VA, on the one hand, and, on the other, hotels in the Metropolitan District. 1/

Order No. 3480, served March 29, 1990, generally described the evidence submitted with the application, and the order is incorporated herein by reference. The Commission required publication of notice and the filing of an affidavit of publication. Applicant complied with these requirements.

On April 17, 1990, six days after the deadline established by Order No. 3480, Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express filed a protest to the application together with a Motion for Leave to Late File. As basis for the Motion for Leave to Late File, Passenger Express stated that its attorney had been instructed to protest the application on the basis of fitness issues placed before the Commission first by informal complaint of Passenger Express and now pending before the Commission in a formal complaint proceeding. Protestant's attorney mistakenly believed the protest period to be 30 days. However, upon realizing his error, protestant's attorney immediately filed the protest. The protest states that Passenger Express is authorized by the Commission to transport flight officers and attendants of Pan American World Airways, Inc., in charter operations pursuant to contract, inter alia, between Washington Dulles International Airport, Loudoun County, VA, on the one hand, and, on the other, points in the District of Columbia.

1/ To the extent this application could be interpreted to include transportation of passengers solely within the Commonwealth of Virginia, it was dismissed for want of jurisdiction pursuant to the Compact, Title II, Article XII, Section 1(b).

Until recently Passenger Express transported passengers pursuant to this authorization and stands ready, willing, and able to do so now pursuant to contract and authorization both of which remain in effect. Passenger Express alleges that Madison has been conducting such transportation to the detriment of Passenger Express since December 1989. Passenger Express further alleges on information and belief that Madison has been transporting flight crews between points in the Metropolitan District for various airlines for approximately two years without proper authorization. It is the position of Passenger Express that Madison's actions render it unfit and that the granting of Madison's application within the context of this case would ". . . nullify the effect of the Commission's Regulation No. 70, and would send a signal to passenger carriers operating within the Transit District that it is no longer necessary to obtain authorization from the Commission . . ." prior to commencing operations. For these reasons, Passenger Express requests that Madison's application be denied.

On April 24, 1990, Madison submitted answers to both the Motion for Leave to Late File and the protest. ^{2/} Madison opposes Passenger Express's request to late file its protest on the grounds that Commission Rule No. 7-07 in combination with Commission Regulation No. 70 requires that all motions for extension of time be filed "timely," i.e., (according to Madison and as to protests) no later than the deadline for filing protests. Although conceding that the term "timely" is not expressly defined, Madison's position is that six days out of time relative to a ten-day period is a reasonable construction and, in fact, that any other construction would impair the Commission's ability to process special certificate applications expeditiously as mandated by Commission Regulation No. 70. Madison further asserts that Passenger Express's motion is defective on its face because it fails to state the statutory or other authority relied on as required by Commission Rule No. 15-01.

In answer to the protest of Passenger Express, Madison states that it is fit to provide the service for which it seeks authority. According to Madison its fitness is evidenced by Pan Am's wish to use Madison's service, by Madison's filing of the instant application, and by its commitment ". . . to observing all applicable regulations and to working cooperatively with WMATC" Madison states that it is confident that the Commission's review of the materials in Madison's application will lead this agency to the same conclusion.

Commission Regulation No. 70 provides that an application of this type will be granted if it is determined that the applicant is fit, willing, and able to perform the proposed service properly and to conform to the provisions of the Compact and the rules, regulations, and orders of the Commission thereunder, and if it is determined that the proposed operations conform to the provisions of Commission

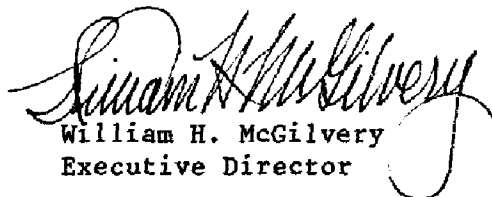
^{2/} Madison's answers were delivered to the Commission's offices shortly after close of business on April 23, 1990.

Regulation No. 70. The issue of whether the public convenience and necessity require such service has been determined in Case No. MP-79-04. See Order No. 2004, served June 20, 1979.

The initial determination of an application filed under Regulation No. 70 is made by the Commission's Executive Director. Without addressing the history which appears to have led to the filing of this application and includes an informal complaint and a formal complaint proceeding, Case No. FC-90-02, Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express v. Madison Limousine Service, Inc., and without addressing the propriety of the protest filed herein, the Executive Director cannot ignore the fact that the issue of Madison's fitness is currently before the Commission. Further, the formal complaint raises the issue of Madison's fitness specifically as it relates to the Pan Am service proposed in this application. The Commission's Executive Director cannot find applicant fit to conduct these operations when this issue is pending before the Commission. Therefore, this application must be denied. Applicant is referred to Commission Regulation No. 70-08 if it should choose to petition the Commission for review of this determination.

IT IS SO ORDERED.

FOR THE COMMISSION:


William H. McGilvery
Executive Director